86-299

Supreme Court, U.S.
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NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

O. LLOYD HUTCHISON, PETITIONER

v.

JAMES S. THOMAS, ET AL.*, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Whether the First Amendment or any other principle of law precludes civil court jurisdiction of an ousted United Methodist minister's complaint claiming that he was deprived of his ministry by fraud, collusion and defamation.

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*The other parties to this case not included in the caption are respondents Merlin D. Vining, Thomas L. Cromwell, Richard L. Burns, the East Ohio Conference of the United Methodist Church, the Board of Ordained Ministry of the East Ohio Conference of the United Methodist Church, and the Judicial Council of the United Methodist Church.

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JAMES S. THOMAS, ET AL., RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Arthur S. Leb, of Amerman, Burt & Jones Co., L.P.A., on behalf of the Rev. O. Lloyd Hutchison, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, infra, 1a - 9a) is reported at 789 F.2d 392. The memorandum opinion of the district court (App. C, infra, 21a - 29a) is not reported.

JURISDICTION

The judgment of the court of appeals (App. B, infra, 19a) was entered on April 28, 1986. On July 18, 1986, Associate Justice Sandra D. O'Connor extended the time within which to file a petition for writ of certiorari to August 26, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment of the United States Constitution provides in relevant part:

> Congress shall make no law respecting an establishment

of religion, or prohibiting
the free exercise thereof; . . .

STATEMENT OF THE CASE

On September 13, 1984, the petitioner, a citizen of West Virginia, filed a complaint against respondents in the United States District Court for the Northern District of Ohio, Eastern Division. He invoked the court's diversity jurisdiction pursuant to 28 U.S.C. 1332(A). The individual respondents are officers of the East Ohio Conference of the United Methodist Church. Bishop James S. Thomas is the chief executive officer of the Conference. Merlin D. Vining, Thomas L. Cromwell, and Richard L. Burns held subordinate Conference offices. The remaining respondents are entities of the United Methodist Church (the Church): The East Ohio Conference of the United Methodist Church (the Conference) is a geographic

jurisdictional entity; the Board of Ordained Ministry of the East Ohio Conference (Board of Ordained Ministry) is a quasi-judicial convocation of ministers under the aegis of the Conference; and the Judicial Council of the United Methodist Church (Judicial Council) is that Church's supreme judicial body.

In the United Methodist Church ministers are itinerant - they move from congregation to congregation at the pleasure of the bishop, with the approval of a committee of congregants known as the pastor-parish relations committee. Each parish has its own pastor-parish relations committee. As a result of fraudulent conduct by the individual respondents, and at the Bishop's request, the Board of Ordained Ministry voted in 1981 that petitioner be involuntarily retired from his status as a minister. It declared him to be "unappointable" - in short, that no

congregation would have him. The Conference affirmed petitioner's involuntary retirement in 1981 and 1982 by votes in open session. In 1982 the respondent Bishop Thomas affirmed petitioner's involuntary retirement. In 1983 the Judicial Council entered a formal decision affirming Bishop Thomas' ruling and holding that all respondent bodies had acted in accordance with church law.

Petitioner's pleadings before the district court in essence charged the individual respondents with falsification of certain records, especially those concerning petitioner's reception by certain pastor-parish relations committees that interviewed petitioner as a potential pastor. The falsification of the records of these meetings created a false picture of the petitioner's ministry, which was placed by the

respondent officers of the Conference before the Board of Ordained Ministry, the Conference itself in open sessions, and the Judicial Council. The pleadings allege that the proceedings of all respondent bodies of the Church were thus tainted with fraud, collusion and defamation.

That fraud and those tortious acts wrongfully induced the respondent church bodies to rely on a false characterization of petitioner's ministry. Moreover, petitioner has specifically alleged that no religious precept has any bearing on this case.

The district court granted respondents' motion to dismiss for lack of subject matter jurisdiction, holding that "civil courts are barred by the First Amendment from determining ecclesiastical questions" (App. C, infra, 23a), and

relying on Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372 (1976) and Watson v. Jones, 80 U.S.(13 Wall.) 679, 20 L.Ed. 666 (1872).

The Sixth Circuit Court of Appeals affirmed, against citing Watson and Serbian Orthodox. Writing for the panel , District Judge Gilmore makes two crucial statements:

First, about the "true nature" of petitioner's claims:

> Appellant is really seeking civil court review of subjective judgments made by religious officials and bodies that he has become "unappointable" due to recurring problems in his relationships with local congregations. This Court cannot constitutionally intervene in such a dispute. (App. A, infra, 5a)

Second - after a review of basically the same authority relied upon by the district court - the following:

> Assuming, without deciding, that review is allowed for

> fraud and collusion, it is still only allowed for fraud or collusion of the most serious nature undermining the very authority of the decision-making body. Certainly there is no claim or showing of such fraud or collusion here. (App. A, infra, 13a)

REASONS FOR GRANTING THE PETITION

This clergy ouster case comes before the Court at a time when a television evangelist is quite seriously being proposed by his adherents as a presidential candidate. The interface in our society between sacred and secular blurs even as courts attempt to guard it. E.g. Lynch v. Donnelly, 465 U.S. 668, 79 L.Ed.2d 604(1985).

This Court should not allow religious bodies and their adherents to be isolated from the secular world by a "wall of deference" imposed by a combination of First Amendment considerations and judicial unwillingness to undertake

adjudication of an admittedly difficult category of cases. Whether they are seen as voluntary associations or as establishments protected by the First Amendment, church bodies function within our society and their members and officers should be subject to the common strictures imposed to punish civil wrongs.

If religious organizations are free to commit tortious acts against their clergy with impunity, the First Amendment ceases to uphold religious freedom and becomes a shield for wrongs that simply should not be tolerated in this society, regardless of the religious or secular affiliation of the perpetrators.

If an ousted clergyman pleads fraud and collusion in a claim against his church and is denied a civil court forum, then the well-known dictum of Justice Brandeis in Gonzalez v. Roman Catholic Archbishop, 280 U.S. 1, 74 L.Ed. 131

(1929) is meaningless. Brandeis recognized that hierarchical church tribunals are entitled to deference, but only "in the absence of fraud, collusion, or arbitrariness." 280 U.S. at 16, 74 L.Ed. at 137. Two circuit cases relied upon by the courts below certainly consider the dictum meaningless. They do so by dismissively characterizing the complaints of ousted clergymen as "ecclesiastical" or dealing with "matters of religion." Simpson v. Wells Lamont Corporation, 494 F.2d 490, 493 (5th Cir. 1974); Kaufmann v. Sheehan, 707 F.2d 355, 359 (8th Cir. 1983).

And yet this Court has recognized in another context that the First Amendment religion clause is Janus-headed. As Justice Roberts stated in Cantwell v. Connecticut, 310 U.S. 296, 303, 84 L.Ed. 1213, 1218 (1939):

> The constitutional inhibition of legislation on the subject of religion has a double aspect. On

> the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship.
>
> ***
>
> On the other hand, it safeguards the free exercise of a chosen form of religion. Thus the Amendment embraces two concepts - freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.

See Serbian Orthodox, supra, 426 U.S. at 734, 49 L.Ed.2d at 177 (Renquist, J. dissenting).

It is respectfully submitted that if the foregoing constitutional analysis is valid, it applies equally to clergy ouster cases. If the ouster process involves fraudulent or collusive activity, its countenance is no less antithetic to our freedoms than the Connecticut statute struck down in Cantwell. Both inhibit the free exercise of religion - the difference is that in Cantwell the exercise took place on the public street and in this

case the inhibition took the form of falsified documents and testimony submitted to church decision-making bodies.

Nor does the Serbian Orthodox case foreclose this position. Justice Brennan clearly leaves the door open by adverting to "marginal civil court review under the narrow rubrics of fraud or collusion when church tribunals act in bad faith for secular purposes." 426 U.S. at 743, 49 L.Ed.2d at 165.

Is there such a thing as "secular scienter?" That is the question to be answered by this Court in this case. The issue in this case was not before the Serbian Orthodox court. But the pregnant dangers of the wall of deference were evident to the dissent:

> If the civil courts are to be bound by any sheet of parchment bearing the ecclesiastical seal and purporting to be a decree of a church court, they can easily be converted into handmaidens of arbitrary lawlessness. Serbian

Orthodox, 426 U.S. at 727, 49 L.Ed.2d at 173 (Renquist, J.)

The dissent advocates that court intrusion in a case of this nature follow the path of "neutral principles" of civil law. Clearly, tort law is no less a neutral principle of our civil law than is property or trust law. See, PROSSER AND KEETON ON TORTS (5th Ed. 1984) Chapter 1. The tenor of this reasoning has been adopted by the majority of this Court in Jones v. Wolf, 443 U.S. 595, 61 L.Ed.2d 775 (1979) which held that neutral principles of state property law were to be applied in adjudicating intra-organizational church property disputes.

This reasoning should lead this Court to strike down those decisions which fail to allow ousted clergy to even plead fraud or collusion, and to clarify whether or not the Gonzalez dictum is a mere curiosity in our jurisprudence. Cf. Baugh v. Thomas, 265 A.2d 675, 56 N.J. 203

(1970); and First Baptist Church of Glen Este v. State of Ohio, 591 F.Supp. 676 (S.D.Oh.W.D. 1983).

This petition presents an opportunity for this Court to fashion a rule for dealing with clergy ouster cases other than one which imposes a "secular scienter" fraud and collusion pleading barrier. Such an extreme pleading barrier should be foreign to our civil procedure. Scheuer v. Rhodes, 416 U.S. 232, 40 L.Ed.2d 90 (1974); Conley v. Gibson, 355 U.S. 41, 2 L.Ed.2d 80 (1957).

Although it mischaracterized the true nature of petitioner's claims, the Sixth Circuit was willing to admit in this case that courts should review allegations that the decision making process of church bodies has been tainted with fraud or collusion. (See p.7, supra). That is exactly what petitioner alleges in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THE REV. O. LLOYD HUTCHISON,
Plaintiff-Appellant,

v.

THE REV. JAMES S. THOMAS; THE REV. MERLIN D. VINING; THE REV. THOMAS L. CROMWELL; THE REV. RICHARD L. BURNS and THE EAST OHIO CONFERENCE OF THE UNITED METHODIST CHURCH; THE BOARD OF ORDAINED MINISTRY OF THE EAST OHIO CONFERENCE OF THE UNITED METHODIST CHURCH, and THE JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH,

Defendants-Appellees.

ON APPEAL from the United States District Court for the Northern District of Ohio, Eastern Division

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Decided and Filed April 28, 1986

Before: JONES and WELLFORD, Circuit Judges; and GILMORE, District Judge*.

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*The Hon. Horace W. Gilmore, United States District Judge for the Eastern District of Michigan, sitting by designation.

APPENDIX A

GILMORE, District Judge. This is an action brought by appellant, an ordained Methodist minister, challenging his enforced retirement under Church disciplinary rules. The defendants are a Bishop of the Methodist Church and three of his subordinates, the Judicial Council of the Church, as well as the East Ohio Conference of the Church and the Board of Ordained Ministry of the Conference. The district court dismissed the complaint for lack of subject matter jurisdiction. We affirm.

In his original complaint, appellant raised a number of grievances against defendants, including contentions that defendants had improperly applied provisions of The Discipline of the United Methodist Church (hereinafter "The Discipline"), governing the appointment and placement of ministers, and that defendants had misled and misguided

various units of the denomination in bringing about his early retirement. He further alleged that defendants were guilty of "fraudulent or collusive or arbitrary" action, as well as defamation, intentional infliction of emotional distress, and breach of contract.

On December 5, 1984, appellant filed a proposed amended complaint that added his wife, claimed loss of consortium on her part, and expanded considerably on his earlier claims.

Prior to the filing of this amended complaint, extensive argument on a motion to dismiss had been heard. On December 11, 1984, the district court filed its opinion granting the motion to dismiss for lack of subject matter jurisdiction. The Court additionally dismissed the complaint for noncompliance

with the mandatory requirements of Rules 8(a), 9(b) and 10(b) of the Federal Rules of Civil Procedure.

Appellant's basic claim is that the United Methodist Church wrongfully expelled him from his ministry in the defendant East Ohio Conference by fraudulent or collusive or arbitrary application of the rules, laws and doctrinal statements known as The Discipline. Appellant was forced to retire due to his alleged inability to work with congregations and get along with members. He had been transferred several times. Several hearings were conducted concerning his ability to relate properly to his congregations. After a final determination by the church's highest tribunal, the Judicial Council, he was placed on involuntary retirement. He alleges that throughout these proceedings the Bishop and other parties

misrepresented his relationships at various churches, and through this misrepresentation brought about his enforced retirement.

The crux of appellant's fraud claim is as follows:

> The individual Defendants acted to have Plaintiff declared "unappointable." ...The essence of Plaintiff's claim is that this false characterization of his ministry was carried out through fraud and misrepresentation, and by withholding from the general bodies concerned (the Board of Ordained Ministry, the Annual Conference of the East Ohio Conference of the United Methodist Church, and the Judicial Conference of the United Methodist Church) the true facts surrounding the events of the Plaintiff's ministry.

Appellant's brief p. 7.

Appellant is really seeking civil court review of subjective judgments made by religious officials and bodies that he had become "unappointable" due to recurring problems in his relationship

with local congregations. This Court cannot constitutionally intervene in such a dispute.

The Supreme Court of the United States has steadfastly upheld the First Amendment's command that secular authorities may not interfere with the internal ecclesiastical working and disciplines of religious bodies, although there may be occasions when civil courts can resolve disputes over the disposition and use of church property.

As the Supreme Court of the United States pointed out as early as 1871 in Watson v. Jones, 80 U.S.(13 Wall.) 679:

> ...[W]e think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such

decisions as final, and as binding on them, in their application to the case before them.

Id. at 272.

Further, the Court said:

> In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence

> of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.
>
> Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals...

Id. 728-29.

This doctrine was recently reaffirmed by the Supreme Court in Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976):

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

Id. 724-25.

Simpson v. Wells Lamont Corporation, 494 F.2d 490 (5th Cir. 1974) is similar to the instant case. There an expelled United Methodist minister sought damages and other relief against his bishop and denominational officials. The Fifth Circuit dismissed the action in a strongly worded opinion:

> This case involves the fundamental question of who will preach from the pulpit of a church, and who will occupy the church parsonage. The bare statement of the question should make obvious the lack of jurisdiction of a civil court. The answer to that question must come from the church.

Id. at 492.

Quoting, with approval, from the district court opinion, the court said:

> "[N]o matter how one may look at this dispute, it had to do with the substance and content of the very words uttered within the church itself, going right to the heart of the doctrine and beliefs and types of sermons that are delivered in churches. Now, the church is a sanctuary, if one exists anywhere, immune from the

> rule or subjection to the authority of the civil courts, either state or federal, by virtue of the First Amendment."

Id. 492-93.

Appellant, however, relies on dictum in Gonzalez v. Roman Catholic Archbishop, 280 U.S. 1 (1929), to support his argument that there exists an exception to this general rule of deference where cases involve "fraud, collusion, or arbitrariness," and that this case falls within that exceptions. There, the Court said:

> In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.

Id. at 16.

The Court dealt with this language in Milivojevich, supra, saying:

Gonzalez first adverted to the possibility of "marginal civil court review," ...in cases challenging decisions of ecclesiastical tribunals as products of "fraud, collusion, or arbitrariness." However, since there was "not even a suggestion that [the Archbishop] exercised his authority [in making the chaplaincy decision] arbitrarily," 280 U.S., at 18, the suggested "fraud, collusion, or arbitrariness" exception to the Watson rule was dictum only. And although references to the suggested exception appear in opinions in cases decided since the Watson rule has been held to be mandated by the First Amendment, no decision of this Court has given concrete content to or applied the "exception." ...

...We have concluded that whether or not there is room for "marginal civil court review" under the narrow rubrics of "fraud" or "collusion" when church tribunals act in bad faith for secular purposes, no "arbitrariness" exception - in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations - is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or

> ecclesiastical rule, custom, or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decision of church tribunals as it finds them.

Id. at 712-13.

It is true that no issue of fraud or collusion was involved in Milivojevich since the only claim was of arbitrariness. Id. at 713 n.7. Nevertheless, the fact remains that the Court has established a firm policy protecting First Amendment rights that prohibits inquiry into ecclesiastical decisions in a hierarchical church, absent the most unusual

circumstances. As pointed out in Ellman, Driven From the Tribunal; Judicial Resolution of Internal Church Disputes, 69 Cal.L.R. 1378, 1987 (1981):

> [T]he only exception to strict deference apparently left open by [Milivojevich] was "marginal review" for fraud or collusion and the possibility of such review was not endorsed, but merely left for later consideration.

This Court finds no basis for intervention in the instant case. There is no showing of such egregious action by the hierarchical authorities of the United Methodist Church to justify court interference, if such interference is even permitted under Milivojevich. Assuming, without deciding, that review is allowed for fraud or collusion, it is still only allowed for fraud or collusion of the most serious nature undermining the very authority of the decision-making body. Certainly there is no claim or showing of fraud or collusion here. And we emphasize

that we do not hold that such great fraud would be a basis for court interference. We merely state that possibility has been left open by the Supreme Court, but further state that there is no showing whatever in this case that such egregious conduct occurred.

Appellant cites as authority for his position Alberts v. Devine, 395 Mass. 59, 479 N.E.2d 113 (1985), cert. denied, 106 S.Ct. 546 (1985). There a Methodist minister brought an action against his psychiatrist and two of his clerical superiors. The minister alleged that his superiors had induced the psychiatrist to disclose confidential information about the minister, and had then used that information to block his reappointment as minister. The court held, among other things, that even if The Discipline or other rule of the Church gave the minister's clerical superiors the right or

duty to seek medical information from his psychiatrist, the First Amendment did not preclude imposition of liability on the superiors, not did it bar judicial inquiry into the church's proceedings culminating in the minister's failure to gain reappointment.

The facts in Alberts are significantly different from the facts in this case, and the case can therefore be distinguished. We do not find the case to be a suitable precedent for the relief sought by appellant here. It involves an entirely different issue with respect to confidentiality between a patient and a psychiatrist. It is possible, in a fact situation such as Alberts, this Court could find jurisdiction, but clearly the case does not provide a basis for jurisdiction here because of the very different factual situation.

Appellant also argues that this case can be decided by application of the "neutral principles" doctrine most recently discussed in Jones v. Wolf, 443 U.S. 595 (1979). That Court expressly noted, however, that the "neutral principles" exception to the usual rule of deference applies only to cases involving disputes over church property. Quoting Presbyterian Church v. Hull Church, 393 U.S. 440, 449 (1969), the Court said:

> [T]here are neutral principles of law, developed for us in all property disputes, which can be applied without "establishing" churches to which property is awarded.

Id. at 599 (emphasis added.)

But this case does not involve a dispute over church property. The "neutral principles" doctrine has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be. The claim here relates to appellant's status

and employment as a minister of the church. It therefore concerns internal church discipline, faith, and organization, all of which are governed by ecclesiastical rule, custom, and law. See Kaufmann v. Sheehan, 707 F.2d 355, 358 (8th Cir. 1983). The neutral principles doctrine relating to church property is simply not applicable in the instant case.

Numerous other federal courts have found federal subject matter jurisdiction lacking in cases such as this.[1] The Fourth Circuit in Rayburn v. General Conference of Seventh-day Adventists, 772 F.2d 1164 (4th Cir. 1985) recently held that the First Amendment prevented

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[1]See, e.g. Simpson v. Wells Lamont Corp., 494 F.2d 490 (5th Cir. 1974); First Baptist Church of Glen Este v. Ohio, 591 F.Supp. 676 (S.D. Ohio 1983); Nunn v. Black, 506 F.Supp. 444 (W.D. Va.), aff'd., 661 F.2d 925 (4th Cir. 1981), cert. denied, 454 U.S. 1146 (1982).

application of Title VII protection to an Associate in Pastoral Care in the Seventh-day Adventist Church:

> The role of an associate in pastoral care is so significant in the expression and realization of Seventh-day Adventist beliefs that state intervention in the appointment process would excessively inhibit religious liberty.

Id. at 1168.

The same reasoning is applicable in the instant case, which involves a church decision on the status of one of its ministers. It is therefore clear that the action of the district court in dismissing the case was proper, and the judgment of the district court is affirmed.[2]

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[2]Appellant's other argument, that the district court erred in relying upon FRCP 8(a), 9(b) and 10(b) without expressly ruling upon appellant's motion to amend his complaint, is moot in light of the affirmance on the constitutional issue, as is the issue of whether there is a cause of action for loss of consortium for appellant's wife.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NO. 85-3051

THE REV. O. LLOYD HUTCHISON,
Plaintiff-Appellant,

v.

THE REV. JAMES S. THOMAS, et al.
Defendants-Appellees.

Before: JONES and WELLFORD, Circuit Judges; and GILMORE, District Judge.

J U D G M E N T

ON APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the record from the said District Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said District Court in this case be and the same is hereby affirmed.

It is further ordered that Defendants-Appellees recover from Plaintiff-Appellant the costs on appeal, as itemized below, and that execution therefor issue out of said District Court, if necessary.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

John P. Hehman
Clerk

Issued as Mandate:
May 21, 1986

A true Copy.

COSTS: None

Attest:

Filing fee....$
Printing.....$

George McCarthy
Deputy Clerk

Total.....$

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. C84-2895A

REV. O. LLOYD HUTCHISON

Plaintiff

Judge John M. Manos

v.

REV. JAMES S. THOMAS, et al.,

MEMORANDUM OF OPINION

Defendants

On September 13, 1984, plaintiff, Rev. O. Lloyd Hutchison, filed the above-captioned case against the defendants, Rev. James S. Thomas, Rev. Merlin D. Vining, Rev. Thomas L. Cromwell, Rev. Richard L. Burns, the East Ohio Conference of the United Methodist Church, the Board of Ordained Ministry of the East Ohio Conference of the United Methodist Church, and the Judicial Council of the United Methodist church (Judicial Council). Hutchison alleges that the defendants

wrongfully expelled him from his ministry in the East Ohio Conference. Jurisdiction is invoked under 28 U.S.C. §1332. On November 5, 1984, the Judicial Council filed a motion to dismiss for lack of subject matter jurisdiction. On November 21, 1984, Hutchison filed a "Motion for the Court to Sustain Subject Matter Jurisdiction." For the following reasons, the Judicial Council's motion to dismiss for lack of subject matter jurisdiction is granted.

Hutchison alleges that the "United Methodist Church is a hierarchical church governed by a body of rules, laws and doctrinal statements know as "The Discipline." Complaint at 10. He alleges further that he "has been wrongfully expelled from his ministry in the Defendant EAST OHIO CONFERENCE by the fraudulent or collusive or arbitrary application of The Discipline....Id.

at 14.

The First Amendment of the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." It is well-settled that civil courts are barred by the First Amendment from determining ecclesiastical questions. Serbian Eastern Orthodox Diocese for the United States of America v. Milivojevich, 426 U.S. 694, 96 S.Ct. 2372 (1976); Md. & Va. Churches v. Sharpsburg Church, 396 U.S. 367, 90 S.Ct. 499 S.Ct. 601 (1969); Kreshik v. St. Nicholas Cathedral, 363 U.S. 190, 8 S.Ct. 1037 (1960); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S.Ct. 143 (1952); Gonzales v. Roman Catholic Archbishop, 280 U.S. 1, 50 S.Ct. (1929); Watson v. Jones, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1872).

The United States Supreme Court has held that:

> "[T]he rule of action which should govern the civil courts... is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided...the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."

Watson, supra, 80 U.S. at 727.

> "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decisions of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence

of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

Id. at 728-29.

Gonzales v. Archbishop, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929), applied this principle in a case involving dispute over entitlement to certain income under a will that turned upon an ecclesiastical determination as to whether an individual would be appointed to a chaplaincy in the Roman Catholic Church. The Court, speaking through Mr. Justice Brandeis, observed:

"Because the appointment [to the chaplaincy] is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made

them so by contract or otherwise." Id., at 16, 50 S.Ct. at 7.

Thus, although Watson had left civil courts no role to play in reviewing ecclesiastical decisions during the course of resolving church property disputes, Gonzales first adverted to the possibility of "marginal civil court review," Presbyterian Churgh, sic., v. Hull Church, supra, 393 U.S. at 447, 89 S.Ct. at 605, in cases challenging decisions of ecclesiastical tribunals as products of "fraud, collusion, or arbitrariness." However, since there was "not even a suggestion that [the Archbishop] exercised his authority [in making the chaplaincy decision] arbitrarily," 280 U.S., at 18, 50 S.Ct., at 8, the suggested "fraud, collusion, or arbitrariness" exception to the Watson rule was dictum only. And although references to the suggested exceptions appear in opinions in cases decided since the Watson rule has been held to be mandated by the First Amendment, no decision of this Court has given concrete content to or applied the "exception."

Milivojevich, supra, 426 U.S. at 711-12, 96 S.Ct. at 2381-82.

"In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the constitution requires that civil courts accept their decisions as binding upon them." Id. 15 724-25, 96 S.Ct. at 2387-88.

Milivojevich did not foreclose "'marginal civil court review' under the narrow rubics, sic., of 'fraud' or 'collusion' when church tribunals act in bad faith for secular purposes."[1] Id. at

[1]See, e.g., EEOC v. Pacific Press Pub. Ass'n., 482 F. Supp. 1291, 1314 (N.D. Cal. 1979) aff'd, 676 F.2d 1272 (9th Cir. 1981) (discharge of secretary performing secular functions subject to review).

713, 96 S.Ct. at 2382 (emphasis added). In this case, however, Hutchison's "claims relate to his status and employment as a priest, and possibly to other matters of concern with the church and its hierarchy, and go to the heart of internal church discipline, faith, and church organization, all involved with ecclesiastical rule, custom and law." Kaufmann v. Sheehan, 707 F.2d 355, 358 (8th Cir. 1983) (no subject matter jurisdiction). Therefore, this court lacks subject matter jurisdiction over Hutchison's complaint. See id.; Lucas v. Hope, 515 F.2d 234, 236 (5th Cir. 1975), cert. denied, 424 U.S. 907, 96 S.Ct. 1464 (1976); Simpson v. Wells Lamont Corp., 494 F.2d 490 (5th Cir. 1974); First Baptist Church of Glen Este v. Ohio, 591 F.Supp. 676 (S.D. Ohio 1983); Nunn v. Black, 506 F.Supp. 444, 448 (W.D. Va.) aff'd, 661 F.2d 925 (4th Cir. 1981), cert. denied,

454 U.S. 1146, 102 S.Ct. 1008 (1982) (First Amendment prohibits judicial resolution of whether church member's expulsion was in accordance with church expulsion procedures); First Presbyterian Church of Schenctady v. United Presbyterian Church, 430 F.Supp. 450, 455, 457 (N.D. N.Y. 1977); 40th Street and Fairmount Avenue Church of God v. Stover, 316 F.Supp. 375, 379 (E.D. Pa. 1970).

Accordingly, the Judicial Council's motion to dismiss for lack of subject matter jurisdiction is granted,[2] and Hutchison's motion is denied.

IT IS SO ORDERED.

John M. Manos
UNITED STATES DISTRICT JUDGE

[2]Additionally, Hutchison's complaint is dismissed for non-compliance with the mandatory requirements of Rules 8(a), 9(b), and 10(b) of the Federal Rules of Civil Procedure. Weinfeld v. Buccaneer Broadcasting, Ltd., 86 F.R.D. 546, 457 (D. Mass. 1980).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

REV. O. LLOYD HUTCHISON	)	CASE NO. C84-2895A
Plaintiff,	)	Judge John M. Manos
v.	)	
REV. JAMES S. THOMAS, et al.	)	ORDER
Defendants.	)	

Pursuant to the Memorandum of Opinion issued in the above-captioned case this date, the Judicial Council's motion to dismiss for lack of subject matter jurisdiction is granted, and Hutchison's motion is denied.

IT IS SO ORDERED.

John M. Manos
UNITED STATES DISTRICT JUDGE

APPENDIX D